

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Superintendent of Insurance, Insurance Administration Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in Section 16 of the District of Columbia Taxicab Commission Establishment Act of 1985, D.C. Law 6-97, D.C. Code, §40-1715 (1986), hereby gives Notice of the Adoption of a new chapter 21 of Title 26 DCMR, on July 10, 1989. The new chapter will implement the provisions of the District of Columbia Taxicab Commission Establishment Act of 1985, governing the creation and maintenance of Sinking Funds to cover the payment of claims and judgments arising out of the ownership, maintenance, or operation of a taxicab. Notice of Proposed Rulemaking was published in the D.C. Register on April 14, 1989, at 36 DCR 2561. No comments were received by the Insurance Administration. These final rules will be effective upon publication of this Notice in the D.C. Register.

CHAPTER 21 - SINKING FUND

2100 APPLICABILITY

2100.1 This chapter applies to all sinking funds created and maintained pursuant to Section 16 of the District of Columbia Taxicab Commission Establishment Act of 1985, D.C. Code, §40-1715 (1986).

2101 CREATION OF A SINKING FUND

2101.1 Any owner of a taxicab maintaining an existing sinking fund or seeking to create a sinking fund shall file with the Superintendent of Insurance the following:

- (a) An original copy of a written trust agreement (hereinafter Sinking Fund Trust Agreement) governing the maintenance of the sinking fund to be approved by Superintendent;
- (b) Except as provided in paragraphs (c) and (d), an original copy of the trust's (hereafter Sinking Fund Trust) financial statement evidencing that the sinking fund has a minimum net worth of six hundred thousand (\$600,000) dollars;
- (c) A notarized actuarial statement evidencing a minimum net worth of two hundred and fifty thousand (\$250,000) dollars for all sinking funds created on or before June 23, 1987;
- (d) For sinking funds created on or before June 23, 1987, a plan, acceptable to the Superintendent, to increase the fund's net worth to the level of six hundred thousand (\$600,000) dollars within a reasonable period.

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- (e) A verified financial statement that includes a valuation of the fund's assets and liabilities using statutory accounting principles;
 - (f) An application to create or maintain a sinking fund in a form prescribed by the Superintendent;
 - (g) In the case of a corporation, a certificate of good standing from the District of Columbia's office of Business Regulation Administration;
 - (h) A form appointing the Superintendent of Insurance agent for service of process; and
 - (i) Biographical data for all administrators, officers, and recommended trustees of the sinking fund.
- 2101.2 The management of the sinking fund shall purchase a collateral instrument on or before April 1 of each year in an amount deemed sufficient by the Superintendent. On or before March 1 of each year, the management of the sinking fund shall submit to the Superintendent an actuarial certified financial statement for the year ending December 31st immediate preceding and any other relevant information requested by the Superintendent, so that the Superintendent may make a determination as to the dollar value of the collateral instrument to be submitted.
- 2101.3 The collateral instrument shall be deposited in a bank designated by the management of the sinking fund.
- 2101.4 At the time of such deposit into the designated bank, representatives from the following District of Columbia government agencies are to be present:
- (a) The Insurance Administration of the Department of Consumer and Regulatory Affairs;
 - (b) The Department of Finance and Revenue; and
 - (c) The Office of the Inspector General.
- 2101.5 In order for any transaction to be effectuated upon the collateral instrument, written authorization from the above referenced District of Columbia agencies is required.

2102 APPROVAL OF SINKING FUNDS

- 2102.1 An application to maintain or create a sinking fund may be approved by the Superintendent after the management of the fund has complied with all of the requirements of Section 2101, provided that the Superintendent determines on the basis of the information submitted that the fund is qualified and its owner is capable of properly conducting the business of the fund so that it will be able to pay claims and judgments against participating members.
- 2102.2 Such approval shall expire on the 30th day of April of each year.
- 2102.3 The management of an approved sinking fund must submit on the 1st day of March each year a certified actuarial financial statement for the year ending December 31st immediate preceding on a form furnished by the Superintendent.

2103 DEDICATION OF FUNDS

- 2103.1 All monies received or collected by the management from members for payment into a sinking fund pursuant to an approved Sinking Fund Trust Agreement or Application shall be deposited into the Sinking Fund Trust account within ten (10) days of receipt.
- 2103.2 The management of a sinking fund may recommend one or more trustees subject to the Superintendent's approval. If none are approved by the Superintendent, the Superintendent shall designate one or more trustees.
- 2103.3 Monies "received or collected" shall include interest and investment income earned by the corpus of the sinking fund.
- 2103.4 Funds deposited into a Sinking Fund Trust Account shall remain segregated and shall not be commingled with any other funds.

2104 REQUIRED COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE

- 2104.1 The limits of liability coverage provided for in the liability coverage document shall be the same as those required of insurance companies offering taxicab liability insurance in the District of Columbia.

2105 PRINCIPAL BUSINESS OFFICE, BOOKS, RECORDS, AND FILES TO REMAIN IN DISTRICT

- 2105.1 The management of a sinking fund subject to this chapter shall maintain its principal business office within the District of Columbia, shall keep all books, records, and files concerning the sinking fund within the District and shall not remove them from the District without the prior written approval of the Superintendent.

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2106 EXAMINATION OF SINKING FUNDS

- 2106.1 The Superintendent may examine all books, papers, property, and affairs concerning the sinking fund. Further, the Superintendent may examine under oath all persons deemed to have material information regarding the property or business of the fund.
- 2106.2 The management of the sinking fund shall produce at its principal business office at a time designated by the Superintendent its books of original entry, and all records and papers relating to its or their business or affairs.
- 2106.3 The management of a fund shall take whatever steps are necessary to facilitate the examination of the fund.
- 2106.4 The Superintendent shall examine each sinking fund to determine whether the fund has the ability to pay judgments obtained against it and to meet the financial obligations imposed by this chapter.

2107 COST OF SINKING FUND COVERAGE

- 2107.1 The management of a sinking fund shall provide to the members of or participants in the fund, documentation evidencing liability coverage that clearly itemizes the following:
- (a) The name and address of the individual covered;
 - (b) The term of liability coverage;
 - (c) The cost of liability coverage; and
 - (d) The limits of liability coverage.

2108 LIMITATION OF EXPENSES AND LOSSES PAYABLE BY SINKING FUNDS

- 2108.1 Only two types of disbursements may be made from a sinking fund:
- (a) Paid losses; and
 - (b) Allocated loss adjustment expenses.
- 2108.2 A paid loss includes all sums paid to claimants, or members, or participants in the sinking fund, in direct settlement or in satisfaction of a judgment for a liability covered by the liability coverage document.
- 2108.3 An allocated loss adjustment expense is an expense incurred by a sinking fund that is related to a specific claim. Allocated loss adjustment expenses include:

- (a) Attorney's fees for claims in a suit;
- (b) Adjuster's fees and medical expenses incurred to determine the extent of the sinking fund's liability for particular claims; and
- (c) Court related expenses for: expert testimony, stenographic services, summons, and copies of legal documents.

2109 REVOCATION OR MODIFICATION OF APPROVAL OF SINKING FUNDS

2109.1 The Superintendent may revoke or modify prior approval of a sinking fund which has failed to comply with any provision of this chapter, or which:

- (a) Is impaired in net worth;
- (b) Is in such condition that its further transaction of business in the District would be hazardous to its participants, claimants, or the public;
- (c) Has refused, neglected, or failed to pay a valid judgment against such fund within thirty (30) days after such judgment has become final;
- (d) Has violated any law of the District;
- (e) Has refused to submit its books, papers, accounts, records, or affairs to the reasonable inspection or examination of the Superintendent;
- (f) Has made, circulated, or caused to be made any statement of any sort misrepresenting its status, or the benefits and advantages promised thereby; or
- (g) The trustee(s) are found to be, by their conduct or otherwise, untrustworthy, incompetent, or have failed to carry out their responsibilities.

2109.2 The Superintendent may, in lieu of revoking or modifying prior approval of a sinking fund, impose a fine as set forth in section 2114.1.

2109.3 The Superintendent shall not revoke or modify prior approval of a sinking fund until the management of the fund has been given not less than thirty (30) days notice of the proposed action, the grounds therefore, and an opportunity for a hearing. Based upon the findings after a hearing, the Superintendent may impose any reasonable and necessary requirement that will assure the financial integrity of the fund or revoke prior approval and require that the management file a bond or policy of insurance.

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- 2109.4 Hearings held pursuant to Section 2109.3 shall be conducted in accordance with the requirements of Section 10 of the D.C. Administrative Procedures Act, D.C. Code, Section 1-1509 (1987).

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2110 HEARING PROCEDURES

- 2110.1 The Superintendent may hold a public hearing to determine whether a sinking fund meets the requirements of this chapter.

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- 2110.2 Notice of the hearing shall be given as follows:

- (a) By publishing same in the D.C. Register; and
- (b) By sending a copy via certified mail to the principal business office of the sinking fund at least thirty (30) days prior to the hearing.

- 2110.3 Failure to appear at the hearing does not preclude the Superintendent from rendering a final disposition in this matter.

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2111 CESSATION OF A SINKING FUND

- 2111.1 The management of a sinking fund may not terminate the fund without the written approval of the Superintendent. After a final disposition of all claims, any remaining funds shall be returned to the owner.

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- 2111.2 Notwithstanding Section 2111.1, the minimum period to return any remaining funds shall be three (3) years.

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2112 LIQUIDATION OF SINKING FUND

- 2112.1 If any sinking fund becomes impaired, insolvent, ceases operation, or violates any provision of this chapter the Superintendent may liquidate the fund in accordance with D.C. Code, Section 35-1508(a)(2), 1981 Edition (as amended).

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2113 EXEMPTION FROM ATTACHMENT OR LEVY

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- 2113.1 Any sinking fund provided for in this chapter shall be exempt from attachment or levy for any obligation or liability of the depositor except as provided in Section 16 of the District of Columbia Taxicab Commission Establishment Act of 1985, D.C. Code, §40-1715 (1986).

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2114 ENFORCEMENT PROVISIONS

- 2114.1 Any violation of any provision of this chapter shall be subject to a civil fine not to exceed five hundred (\$500) dollars.

2199 DEFINITIONS

COLLATERAL INSTRUMENT - A financial guarantee instrument consisting of a bond, letter of credit or any other instrument which acts as security against management misconduct, financial impairment or insolvency of the sinking fund and non-payment of claims.

MANAGEMENT - A taxicab owner, taxicab company or taxicab association which creates or maintains a sinking fund and which has a fiduciary duty to manage, direct, or administer the affairs of the sinking fund.

TAXICAB OWNER - Any person, corporation, partnership, or association that holds the legal title to a taxicab the registration of which is required in the District of Columbia.